IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1013 OF 2005
IN
CRIMINAL APPEAL NO.941 OF 2003

Shrichand Uttamchand Bhatia — Applicant
vs.
The State of Maharashtra — Respondent

Ms.S.M.Dandekar for the applicant.

Ms.U.V.Kejriwal, Additional Public Prosecutor for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 3rd March 2005

P.C.

Heard the learned counsel for the applicant.

2. The first bail application being criminal application no.3162/2003 came to be rejected by the Division Bench of this Court on 19th August 2003 by the following order:

> ". The appeal is admitted on 18th August 2003. The present application is for bail. The applicant - accused is convicted for offence under section 302 of I.P.C. and sentenced to suffer rigorous imprisonment for life. We have heard the learned Counsel for the applicant for quite some time. He says that the applicant is acquitted of offence under section 498A and 304 (B) read with 34 I.P.C. Therefore, the prosecution has not been able to substantiate its case of cruelty. So far as the case of prosecution that the applicant is guilty of offence under section 302 is concerned, the learned Counsel contended that it is not made out by; the

evidence on record. He submitted that the case of prosecution rests only on circumstantial evidence and the chain of circumstantial evidence is not complete and it does not point unerringly to the guilt of accused. He further submitted that there is no motive to commit crime. He further submitted that the applicant was not medically examined. He further submitted that two doctors have conducted the post mortem. However, only one doctor was examined. The learned Counsel also drew our attention to the fact that the applicant was on bail through out the trial. He has re-married and has two minor children. In the circumstances of the case, therefore, the applicant, according to the learned counsel, should be released on bail.

2. We are unable to appreciate the submissions of the learned counsel for the applicant. It is significant to note that the medical officer has opined that the death of the deceased was due to throttling. It cannot be disputed that the applicant was with his wife i.e. the deceased in their bedroom. There were abrasions on the neck of the deceased. In such circumstances, the applicant - accused ought to give some plausible explanation as to how the deceased died. An attempt has been made by the applicant-accused to suggest the deceased hung herself. The defence witness was examined in support of this case. The trial court has rightly disbelieved this witness. In such circumstances, we are of the opinion that this is not a fit case for bail. Hence, we reject this application for bail. However, it is made clear that if the appeal filed by the applicant-accused is not heard for a considerable time, the applicant-accused is at liberty to approach this Court again."

3. The learned counsel for the applicant submits that since the appeal has not been heard until date, the applicant had to apply for bail again.

4. It is true that while dismissing the earlier bail application, the Division Bench did observe that if the appeal was not heard for a consideration time, the applicant shall be at liberty to approach the Court again. The appeals pertaining to the year 2001 are already on final hearing board. The first bail application having been rejected on merits, we find no justifiable ground to release the accused-applicant on bail merely because the appeal has not been heard so far. We are not persuaded to consider the second bail application on merits again when the first bail application came to be rejected on merits.

5. We, accordingly, reject this bail application.

6. At this point of time it is not possible to fix the date of hearing of this appeal since older appeals in which the accused are in jail are being taken up for hearing.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)